IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6170 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SITABEN MAKANJI D/O LAXMIBEN M & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR RD DAVE for Petitioner(s) : 1 - 4.
MR HUKAM S IGH AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 26/02/2007

ORAL JUDGMENT

1. By this writ application, the petitioners seek

to challenge the order passed by the revenue authorities whereunder the authorities have held that the petitioners No.1,2 and 3, the unmarried daughters of the deceased Makanji, would not be entitled to any share in the property in dispute and the petitioner No.4 would be entitled to hold one unit.

2. Shri Dave, learned counsel for the petitioners, submit that Makanji died on 18th September, 1947 and as some of the daughters were minor and unmarried, they would be entitled to claim their share in the property. It is also submitted by Mr. Dave that on 1st April, 1976, when the amended provisions of the Gujarat Agricultural Land Ceiling Act came into force, the petitioners Nos.1 to 3 had an existing right, under the circumstances, each of the daughter would be entitled one unit.

3. The Hindu Succession Act came into force in the year 1956. Prior to enforcement of the Hindu Succession Act, Hindus were governed by

customary Hindu law which was commonly known as Shruti or Smruti. Before the Hindu Succession Act came into force, right to property, right to take any person in adoption or such other things were declared by different laws which were commonly known as Mitakshara or Banaras Hindu Law, Dayabhaga schools or Bangal Hindu Law, Mayubh or Bombay School of Hindu Law. Shri Dave submits that the parties are governed by Mitakshara Hindu Law. If that be so, on death of the last male member, the property would be succeeded by the widow of such person and if there are more than one widows, then all the co-widows would hold the property. However, they would became limited owner of the property, neither they would have right of disposition nor any right to bequeath the property. If such a widow or widows died before coming into force of the Hindu Succession Act, then the property was to go to the revisioner i.e. male members who are otherwise the members of the family of the deceased. In the present case, the three daughters were not entitled to succeed to the

property on 18th September, 1947 because under the old Hindu Law, a daughter was not entitled to succeed to the father's property. Such a right for the first time was conferred upon a daughter under the Hindu Succession Act, 1956 and right to claim partition of joint Hindu family property is conferred upon the daughters under Act No.39/2005. As on the date of the death of Makanji i.e. 18th September, 1947, the daughters had no right in the property, no new right would be created in their favour on coming into force of the Hindu Succession Act, 1956 or Act No.39/2005 because it would be trite to say that succession never remains in abeyance.

4. Petitioner No.4-Laxmiben, widow of Makanji, who became a limited owner, would become an absolute owner of the property under Section 14 of the Hindu Succession Act. If Laxmiben became an absolute owner of the property on coming into force of the Hindu Succession Act, 1956, then the daughters would not be entitled to say that they are entitled to some share in the father's

property or they are entitled to one unit each in the property in the ceiling proceeding or they would be entitled to a notice from the authority.

5. I find no reason to interfere in the matter. The petition deserves to and is accordingly dismissed.

(*R.S.GARG, J.*)

*mithabhai